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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,067	09/23/2003	Walter Odoni	DT-6626	5091

30377 7590 06/01/2006

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NEW YORK, NY 10017-5621

EXAMINER
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HARRIS, KATRINA B

ART UNIT	PAPER NUMBER
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3747

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/670,067

Applicant(s)

ODONI ET AL.

Examiner

Katrina B. Harris

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,9,15 and 16 is/are rejected.
- 7) ☒ Claim(s) 3,5-8 and 10-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4, 9, 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Voelker et al. (6,877,308). Voelker discloses as in **claim 1**, a setting tool for driving fastening elements in a constructional component, comprising a combustion chamber (1); a fuel source (33); a fuel conduit (45) for connecting the fuel source (33) with the combustion chamber(1); at least one metering device (30,31) arranged in the fuel conduit (45) for metering out a predetermined amount of fuel in each operation cycle in form of an n-number of discrete equal volume, separate portions, wherein  $n > 1$  (see column 2, lines 10-54 and column 6, lines 57-60), with a preset volume of the separate portions remaining constant; and a control device (34) for actuation of the metering device.

Regarding **claim 2**, sensor means (65) for determining parameters of the setting tool and of the environment and for communicating acquired data to the control device (34), whereby the control device determines, for each operation cycle, the n-number based on the determined parameters of the setting tool and the environment.

Regarding **claim 4**, a combustion-engined setting tool for driving fastening element in a constructional components comprising a combustion chamber (1): a fuel source(33); a fuel conduit (45) for connecting the fuel source (33) with the combustion chamber (1); at least one metering device (30,31) arranged in the fuel conduit (45) for metering out a predetermined amount of fuel in form of a n-number of discrete separate portions. with a preset volume of each separate portion remaining constant; and a control device (20) for actuation of the metering device (30,31), wherein the metering device (30,31) comprises at least one metering chamber (30a,30b) (see figure 8) having inlet (49,50) and outlet (47,48), and closing means ( ) for reversibly closing the inlet (49,50) and the outlet (47,48), and wherein during one working cycle, the inlet (49,50) and the outlet (47,48) are alliteratively and periodically opened and closed n-times.

Regarding **claim 9**, wherein the sensor means (see column 10, lines 17-20) comprises sensors for determining air pressure, temperature, and air humidity of surrounding the setting tool, air.

Regarding **claim 15**, wherein the control device (34) is formed as a data processing unit for evaluating and processing the acquired parameters.

Regarding **claim 16**, wherein the data processing unit is formed as a microprocessor (64).

***Allowable Subject Matter***

Claims 3, 5-8 and 10-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

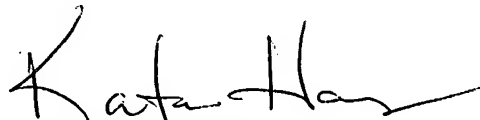
***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katrina B. Harris whose telephone number is 571-272-4842. The examiner can normally be reached on 5:30 AM -2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Cronin can be reached on 571-272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

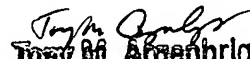
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Katrina B. Harris  
Examiner  
Art Unit 3747

KBH



Tony M. Argenbright  
Primary Examiner  
Art Unit 3747